

Illinois Compiled Statutes

PROPERTY

(765 ILCS 940/) Mortgage Rescue Fraud Act.

(765 ILCS 940/1)

Sec. 1. Short title. This Act may be cited as the Mortgage Rescue Fraud Act.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/5)

Sec. 5. Definitions. As used in this Act:

"Distressed property" means residential real property consisting of one to 6 family dwelling units that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 90 days delinquent on any loan that is secured by the property.

"Distressed property consultant" means any person who, directly or indirectly, for compensation from the owner, makes any solicitation, representation, or offer to perform or who, for compensation from the owner, performs any service that the person represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale or the loss of the home due to nonpayment of taxes;
 - (2) obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
 - (3) assist the owner to exercise any right of reinstatement or right of redemption;
 - (4) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
 - (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
 - (6) assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
 - (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or tax sale; or
 - (8) save the owner's residence from foreclosure or loss of home due to nonpayment of taxes.
- A "distressed property consultant" does not include any of the following:

- (1) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development;
- (2) a person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;
- (3) banks, savings banks, savings and loan associations, credit unions, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States;
- (4) licensed attorneys engaged in the practice of law;
- (5) a Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities;
- (6) a 501(c)(3) nonprofit agency or organization, doing business for no less than 5 years, that offers counseling or advice to an owner of a distressed property, if they do not contract for services with for-profit lenders or distressed property purchasers, or any person who structures or plans such a transaction;
- (7) licensees of the Residential Mortgage License Act of 1987;
- (8) licensees of the Consumer Installment Loan Act

who are authorized to make loans secured by real property; or

(9) licensees of the Real Estate License Act of 2000

when providing licensed activities.

"Distressed property purchaser" means any person who acquires any interest in fee in a distressed property while allowing the owner to possess, occupy, or retain any present or future interest in fee in the property, or any person who participates in a joint venture or joint enterprise involving a distressed property conveyance. "Distressed property purchaser" does not mean any person who acquires distressed property at a short sale or any person acting in participation with any person who acquires distressed property at a short sale, if that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property at a later date.

"Distressed property conveyance" means a transaction in which an owner of a distressed property transfers an interest in fee in the distressed property; the acquirer of the property allows the owner of the distressed property to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or promises to convey an interest in fee back to the owner or gives the owner an option to purchase the property at a later date.

"Person" means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized.

"Service" means, without limitation, any of the following:

(1) debt, budget, or financial counseling of any type;

(2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a distressed property;

(3) contacting creditors on behalf of an owner of a residence that is distressed property;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a distressed property may cure the owner's default and reinstate his or her obligation;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the distressed property;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any court; or

(7) giving any advice, explanation, or instruction to an owner of a distressed property that in any manner relates to the cure of a default or forfeiture or to the postponement or avoidance of sale of the distressed property.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/10)

Sec. 10. Distressed property consultant contract terms.

(a) A distressed property consultant contract must be in writing and must fully disclose the exact nature of the distressed property consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 12-point boldface type and completed with the name of the distressed property consultant, must be printed immediately above the statement required by subsection (c) of this Section:

"NOTICE REQUIRED BY ILLINOIS LAW

.....(Name) or anyone working for him or her CANNOT:

(1) Take any money from you or ask you for money until (Name) has completely finished doing everything he or she said he or she would do; or

(2) Ask you to sign or have you sign any lien, mortgage, or deed."

(c) A distressed property consultant contract must be written in the same language as principally used by the distressed property consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 12-point boldface type, as follows:

"You, the owner, may cancel this transaction at any time until after the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented he or she would perform. See the attached notice of cancellation form for an explanation of this right."

(d) A distressed property contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) the name and address of the distressed property consultant to which the notice of cancellation is to be mailed; and
- (2) the date the owner signed the contract.

(e) A distressed property consultant contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which must be attached to the contract, must be easily detachable, and must contain, in at least 12-point boldface type, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, at any time until after the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented he or she would perform.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to:

.....(Name of distressed property consultant)

at(Address of distressed property consultant's place of business)

I hereby cancel this transaction on(Date)

.....(Owner's signature)".

(f) The distressed property consultant shall provide the owner with a copy of a distressed property consultant contract and the attached notice of cancellation immediately upon execution of the contract.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/15)

Sec. 15. Rescission of distressed property consultant contract.

(a) In addition to any other legal right to rescind a contract, an owner has the right to cancel a distressed property consultant contract at any time until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform.

(b) Cancellation occurs when the owner gives written notice of cancellation to the distressed property consultant at the address specified in the distressed property consultant contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the distressed property consultant contract, shall be conclusive proof of notice of service.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the distressed property consultant contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/20)

Sec. 20. Waiver of a distressed property consultant contract.

(a) Any waiver by an owner of the provisions of Section 10 or 15 is void and unenforceable as contrary to public policy.

(b) Any attempt by a distressed property consultant to induce an owner to waive the owner's rights is a violation of the Act.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/25)

Sec. 25. Distressed property conveyance contract. A distressed property purchaser shall enter into every distressed property conveyance in the form of a written contract. Every distressed property conveyance contract must be written in letters of a size equal to at least 12-point boldface type, in the same language principally used by the owner of the distressed property to negotiate the sale of the distressed property, must be fully completed, signed, and dated by the owner of the distressed property and the distressed property purchaser, and must be witnessed and acknowledged by a notary public, before the execution of any instrument of conveyance of the distressed

property.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/30)

Sec. 30. Distressed property conveyance contract terms.

Every contract required by Section 25 must contain the entire agreement of the parties, be fully assignable, and survive delivery of any instrument of conveyance of the distressed property. Every lease entered into pursuant to a contract required by Section 25 is terminable at will by the distressed property owner, without liability. Every contract required by Section 25 must include the following terms:

- (1) the name, business address, and the telephone number of the distressed property purchaser;
- (2) the address of the distressed property;
- (3) the total consideration to be given by the distressed property purchaser or tax lien payor in connection with or incident to the sale;
- (4) a complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the distressed property purchaser represents he or she will perform for the owner of the distressed property before or after the sale;
- (5) a complete description of the terms of any related agreement designed to allow the owner of the distressed property to remain in the home such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;
- (6) a notice of cancellation as provided in this Section;
- (7) the following notice in at least 12-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the distressed property purchaser, immediately above the statement required by this Section:

"NOTICE REQUIRED BY ILLINOIS LAW

Until your right to cancel this contract has ended,
(Name) or anyone working for(Name)
 CANNOT ask you to sign or have you sign any deed or any other document.
 You are urged to have this contract reviewed by an attorney of your choice
 within 5 business days of signing it."; and

(8) if title to the distressed property will be transferred in the conveyance transaction, the following notice in at least 14-point boldface type if the contract is printed, or in capital letters if the contract is typed, and completed with the name of the distressed property purchaser, immediately above the statement required by this Section:

"NOTICE REQUIRED BY ILLINOIS LAW

As part of this transaction, you are giving up title
 to your home."

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/35)

Sec. 35. Cancellation of a distressed property conveyance contract.

(a) In addition to any other right of rescission, the owner of the distressed property has the right to cancel any contract with a distressed property purchaser until midnight of the fifth business day following the day on which the owner of the distressed property signs a contract that complies with Sections 25 and 30 or until 8:00 a.m. on the last day of the period during which the owner of the distressed property has a right of redemption under the Illinois Mortgage Foreclosure Law or the Property Tax Code, whichever occurs first.

(b) Cancellation occurs when the owner of the distressed property delivers, by any means, written notice of cancellation to the address specified in the distressed property conveyance contract.

(c) A notice of cancellation given by the owner of the distressed property need not take the particular form as provided with the distressed property conveyance contract.

(d) Within 10 days following receipt of a notice of cancellation given in accordance with this Section, the distressed property purchaser shall return, without condition, any original contract and any other documents signed by the owner of the distressed property.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/40)

Sec. 40. Notice of cancellation of a distressed property conveyance contract.

(a) The contract must contain in immediate proximity to the space reserved for the owner of the distressed property's signature a conspicuous statement in a size equal to at least 12-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before(Date and time of day). See the attached notice of cancellation form for an explanation of this right."

The distressed property purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(b) The contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in a size equal to a 12-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the distressed property purchaser shall enter the date on which the owner of the distressed property executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in at least 12-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date contract signed)

You may cancel this contract for the sale of your home, without any penalty or obligation, at any time before (enter date and time of day). To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice to(Name of purchaser) at (Street address of purchaser's place of business) NOT LATER THAN (Enter date and time of day).

I hereby cancel this transaction on (Date) (Seller's signature)".

(c) The distressed property purchaser shall provide the owner of the distressed property with a copy of the contract and the attached notice of cancellation immediately at the time the contract is executed by all parties.

(d) The distressed property purchaser shall record the contract with the recorder of deeds in the county where the distressed property is located within 10 days of its execution, provided the contract has not been canceled.

(e) The 5 business days during which the owner of the distressed property may cancel the contract shall not begin to run until all parties to the contract have executed the contract and the distressed property purchaser has complied with all the requirements of this Section.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/45)

Sec. 45. Waiver of a distressed property conveyance contract. Any waiver of the provisions of Sections 35 and 40 are void and unenforceable as contrary to public policy, except that a consumer may waive the 5-day right to cancel provided in Section 35 if the property is subject to a foreclosure sale within the 5 business days and the owner of the distressed property agrees to waive his or her right to cancel in a handwritten statement that is signed by all parties holding title to the distressed property.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/50)

Sec. 50. Violations.

(a) It is a violation for a distressed property consultant to:

(1) claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform;

(2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason that exceeds 2 monthly mortgage payments of principal and interest or the most recent tax installment on the distressed property, whichever is less;

(3) take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;

(5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a distressed property from an owner with whom the distressed property consultant has contracted;

(6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) induce or attempt to induce an owner to enter a contract that does not comply in all respects with Sections 10 and 15 of this Act.

(b) A distressed property purchaser, in the course of a distressed property conveyance, shall not:

(1) enter into, or attempt to enter into, a distressed property conveyance unless the distressed property purchaser verifies and can demonstrate that the owner of the distressed property has a reasonable ability to pay for the subsequent conveyance of an interest back to the owner of the distressed property and to make monthly or any other required payments due prior to that time;

(2) fail to make a payment to the owner of the distressed property at the time the title is conveyed so that the owner of the distressed property has received consideration in an amount of at least 82% of the property's fair market value, or, in the alternative, fail to pay the owner of the distressed property no more than the costs necessary to extinguish all of the existing obligations on the distressed property, as set forth in subdivision (b)(10) of Section 45, provided that the owner's costs to repurchase the distressed property pursuant to the terms of the distressed property conveyance contract do not exceed 125% of the distressed property purchaser's costs to purchase the property. If an owner is unable to repurchase the property pursuant to the terms of the distressed property conveyance contract, the distressed property purchaser shall not fail to make a payment to the owner of the distressed property so that the owner of the distressed property has received consideration in an amount of at least 82% of the property's fair market value at the time of conveyance or at the expiration of the owner's option to repurchase.

(3) enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant, or in any other manner represent that the distressed property purchaser is acting on behalf of the homeowner, or the distressed property purchaser is assisting the owner of the distressed property to "save the house", "buy time", or do anything couched in substantially similar language;

(5) misrepresent the distressed property purchaser's status as to licensure or certification;

(6) do any of the following until after the time during which the owner of a distressed property may cancel the transaction:

(A) accept from the owner of the distressed property an execution of any instrument of conveyance of any interest in the distressed property;

(B) induce the owner of the distressed property to execute an instrument of conveyance of any interest in the distressed property; or

(C) record with the county recorder of deeds any document signed by the owner of the distressed property, including but not limited to any instrument of conveyance;

(7) fail to reconvey title to the distressed property when the terms of the conveyance contract have been fulfilled;

(8) induce the owner of the distressed property to execute a quit claim deed when entering into a distressed property conveyance;

(9) enter into a distressed property conveyance where any party to the transaction is represented by power of attorney;

(10) fail to extinguish all liens encumbering the distressed property, immediately following the conveyance of the distressed property, or fail to assume all liability with respect to the lien in foreclosure and prior liens that will not be extinguished by such foreclosure, which assumption shall be accomplished without violations of the terms and conditions of the lien being assumed. Nothing herein shall preclude a lender from enforcing any provision in a contract that is not otherwise prohibited by law;

(11) fail to complete a distressed property

conveyance before a notary in the offices of a title company licensed by the Department of Financial and Professional Regulation, before an agent of such a title company, a notary in the office of a bank, or a licensed attorney where the notary is employed; or

(12) cause the property to be conveyed or encumbered without the knowledge or permission of the distressed property owner, or in any way frustrate the ability of the distressed property owner to complete the conveyance back to the distressed property owner.

(c) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of this State or the federal government is an accurate determination of the fair market value of the property.

(d) "Consideration" in item (2) of subsection (b) means any payment or thing of value provided to the owner of the distressed property, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of the owner of the distressed property.

"Consideration" shall not include amounts imputed as a downpayment or fee to the distressed property purchaser, or a person acting in participation with the distressed property purchaser.

(e) An evaluation of "reasonable ability to pay" under subsection (b)(1) of this Section 50 shall include debt to income ratio, fair market value of the distressed property, and the distressed property owner's payment history. There is a rebuttable presumption that the distressed property purchaser has not verified reasonable payment ability if the distressed property purchaser has not obtained documents of assets, liabilities, and income, other than a statement by the owner of the distressed property.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/55)

Sec. 55. Civil remedies.

(a) A violation of any of the provisions of this Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. All remedies, penalties, and authority granted to the Attorney General or State's Attorney by the Consumer Fraud and Deceptive Business Practices Act shall be available to him or her for the enforcement of this Act.

(b) A consumer who suffers loss by reason of any violation of any provision of this Act may bring a civil action in accordance with the Consumer Fraud and Deceptive Business Practices Act to enforce that provision. All remedies and rights granted to a consumer by the Consumer Fraud and Deceptive Business Practices Act shall be available to the consumer bringing such an action. The remedies and rights provided for in this Act are not exclusive, but cumulative, and all other applicable claims, including, but not limited to, those brought under the doctrine of equitable mortgage, are specifically preserved.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/60)

Sec. 60. Criminal mortgage rescue fraud. A person commits the offense of criminal mortgage rescue fraud when he or she intentionally violates any provision enumerated in Section 50 of this Act.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/65)

Sec. 65. Criminal penalties. A person who commits the offense of criminal mortgage rescue fraud is guilty of a Class 2 felony.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/300)

Sec. 300. (Amendatory provisions; text omitted).

(Source: P.A. 94-822, eff. 1-1-07; text omitted.)

(765 ILCS 940/999)

Sec. 999. Effective date. This Act takes effect January 1, 2007.

(Source: P.A. 94-822, eff. 1-1-07.)

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